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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1943

No. 344

C. F. MOODY,

Petitioner,

vs.

**CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE, AND
HENRY MORGENTHAU, JR., SECRETARY OF THE
TREASURY, AND UNITED STATES OF AMERICA
(INTERVENOR).**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT
THEREOF.**

**G. LYLE JONES,
JOHN WATTAWA,**
Counsel for Petitioner.



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(INTERVENOR).**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA.**

*To the Honorable, the Chief Justice and the Associate
Justices:*

C. F. Moody, Petitioner, prays for writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia, entered June 30, 1943, in this cause, its number 8449 (R. 83) affirming a judgment of the District Court of the United States for the District of Columbia. The opinion of the Court of Appeals appears in the record herein (R. 79-82), and is not yet reported.

Questions Presented.

1. In a proceeding instituted in a United States District Court under the general condemnation statute (Act of

August 1, 1888, c. 728, 25 Stat. 357, 40 U. S. C., Sections 257, 258), does the Court have authority to enter a personal judgment against the United States for the value of the property involved, where prior thereto the United States had taken and appropriated said property, so found in that judgment which also decreed therein that title to said property was in the United States, no appeal from said judgment having been prosecuted, and the appropriation of said property by the United States having since continued?

2. Where, prior to the conclusion of its proceeding initiated under said general condemnation statute, the United States had appropriated the property to its use, is the United States thereby estopped from thereafter abandoning the property, with resulting authority then in a Federal Court to render in that proceeding a personal judgment against the United States for the full value of the property?

3. Is relief limited to prosecution under the Tucker Act, where more than 8 years ago the United States entered upon, and appropriated, property to its use, and continued, and still continues, such appropriation, refusing, however, to pay the award thereafter made therefor in its own condemnation proceeding, and not appealing from the judgment rendered therein over 4 years ago, which established such appropriation, and decreed title to said property to be in the United States, and granted recovery against the United States for the amount of said award?

4. If a Federal Court has the right to decree that property has been taken and appropriated, does it have the concomitant right to decree compensation for such property, without challenge by another Federal Court having no direct appellate jurisdiction in the premises?

Statutes Involved.

Sections 257 and 258 of the Act of August 1, 1888, c. 728, 25 Stat. 357, 40 U. S. C. as follows:

“257. Condemnation of realty for sites and other uses; jurisdiction. In every case in which the Secretary of the Treasury or any other officer of the Government has been or shall be, authorized to procure real estate for the erection of a public building or for other public uses, he shall be authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so. And the United States district courts of the district wherein such real estate is located, shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney General of the United States, upon every application of the Secretary of the Treasury, under this section and section 258 of this title, or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice.

“258. Same; procedure. The practice, pleadings, forms and modes of proceedings in causes arising under the provisions of section 257 of this title shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the State within which such district court is held, any rule of the court to the contrary notwithstanding.” (R. 70)

The following provisions of Paragraph 20 of the Act of March 3, 1887, c. 359, 24 Stat. 505, as amended, 28 U. S. C., Section 41 Judicial Code, Section 24, known as the Tucker Act, providing that District Courts shall have original jurisdiction—

“Concurrent with the Court of Claims, of all claims not exceeding \$10,000 founded upon the Constitution of the United States or any law of Congress, or upon

any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said Court; * * * . No suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made. * * * All suit brought and tried under the provisions of this paragraph shall be tried by the court without a jury". (R. 75, 76)

Jurisdiction.

This Court has jurisdiction under Section 240 (a) of the Judicial Code, as amended by the Acts of February 13, 1925, and of June 7, 1934.

By stipulation filed with the Clerk of this Court, the parties hereto have agreed that subject to the approval of this Court, the printed record, for the purpose of this petition for writ of certiorari, may consist of the appendices to briefs for petitioner and for respondents filed in the United States Court of Appeals for the District of Columbia, and of the proceedings in the Court of Appeals. The entire transcript of the record in the Court of Appeals has been filed with the Clerk of this Court.

Statement of the Case.

On December 7, 1934, Petitioner executed option giving the United States right to purchase within six months, at \$4.00 per acre, certain lands owned by him in North Caro-

lina, and also the right, upon acceptance of that option, to use, occupy, and administer said lands, if the United States elected to do so, for the purpose of National forests (R. 37-39). The agreement also provided that if Petitioner's title was unsatisfactory to the Attorney General, the United States would, if it deemed advisable, institute condemnation proceedings (R. 38), which, of course, it had full right otherwise to do.

It appeared for the first time in the record herein, to wit, on August 30, 1938, that on January 21, 1935, the United States, by a letter from an acting regional forester, Department of Agriculture, had accepted that option (R. 22, 80).

On August 21, 1936—14½ months after the expiration of the option, and almost 2 years after its execution—the United States instituted in the United States District Court for the Western District of North Carolina a condemnation proceeding covering the lands in question, among others (R. 9-14). In the Petition in said proceeding, the only reference to said option was “that the apparent and presumptive owners of the above mentioned tracts of land executed and delivered option to convey said land to the United States at the prices stated therein” (R. 11, 12).

In his Answer thereto, Petitioner pleaded that said option had expired, and was of no force and effect (R. 14). The United States filed no pleading to said Answer, nor until August 30, 1938,—a year after a trial as to the value had been conducted and a jury had found the value of the land to be \$6.00 per acre,—did it make reference in said condemnation proceedings to said letter of acceptance of January 21, 1935 (R. 22, 80).

In said proceedings, judgment of condemnation was entered February 11, 1937, in favor of the United States for said lands, among others (R. 52-57). Commissioners were appointed, who fixed the value of Petitioner's lands at \$4.00 per acre (R. 16, 17). Petitioner excepted to that award, and

demanding jury trial, to which, under the provisions of the North Carolina statute, he was entitled (R. 17, 19, 80).

Jury trial took place thereafter upon the one controverted question, namely, the reasonable market value of Petitioner's lands, with resulting verdict on August 26, 1937, that said value was \$6.00 per acre (R. 21, 45, 46). After said verdict, but before entry of judgment thereupon, the United States moved to be allowed to withdraw Petitioner's tracts from said condemnation proceedings (R. 21, 46, 59, 61), Petitioner opposing on the ground that the United States had in law already appropriated said property (R. 61, 62). At the hearing August 30, 1938, upon said motion (a jury not being demanded), evidence was presented establishing that the United States had appropriated Petitioner's property; that it had already entered upon Petitioner's tracts, and had cut, removed, and appropriated large quantities of timber, having first constructed roads on said tracts for that purpose (R. 22). Also, then, for the first time in said proceeding, as hereinabove stated, the United States referred to its said letter of option acceptance of January 21, 1935 (R. 80). The Court reserved its decision on said motion to abandon, pending the then forthcoming decision in *Wachovia Bank and Trust Company, Guardian, v. U. S. A.*, 98 F. (2d) 609 (R. 5, 22, 62, 80).

After that decision was rendered, and on December 3, 1938, the United States then moved for permission to withdraw its said motion to abandon Petitioner's tracts from the condemnation proceedings, and also moved for judgment for title to said tracts upon payment of \$4.00 per acre (R. 62, 63, 80). On January 24, 1939, the Court found that Petitioner's said tracts had in law been appropriated by the United States, and that Petitioner was entitled to recover \$6.00 per acre therefor, as fixed by said jury, and the Court granted permission to the United States to withdraw its pending motion to abandon said tracts, and adjudged that

the United States was the owner in fee simple of the same, and entitled to possession, and adjudged further that Petitioner recover of the United States the sum of \$8,430.00 (1405 acres at \$6.00 per acre), with interest thereon at six per cent from August 26, 1937, date of the jury's verdict fixing the value at \$6.00 per acre (R. 20-24).

On April 24, 1939, the United States noticed appeal from said judgment (R. 6), but as such appeal was not prosecuted, it was dismissed on February 24, 1940 (R. 27).

Despite demand therefor, the United States did not pay said judgment nor any part thereof (R. 27, 28, 46). Accordingly, on May 2, 1941, Petitioner instituted the instant proceeding in the District Court of the United States for the District of Columbia, for mandatory injunction against Honorable Claude R. Wickard and Honorable Henry Morgenthau, Jr., respectively as Secretary of Agriculture and as Secretary of the Treasury, and also against Honorable Robert H. Jackson, as Attorney General, to require them, or each of them, to take appropriate ministerial steps to have said judgment for \$8,430.00, with interest thereon at six per cent from August 26, 1937, paid in full (R. 2-9). Thereafter, on motion of said defendants, said District Court dismissed Petitioner's Complaint as to Honorable Robert H. Jackson, Attorney General, but declined to dismiss the proceedings as to the other defendants, who thereupon answered, the Secretary of Agriculture asserting counter-claim (R. 28-31).

October 14, 1942, the United States, upon its motion, was permitted to intervene (R. 66), and did then file Complaint in Intervention herein, asserting that by the entry of said judgment of January 24, 1939, it had been damaged by the difference between \$6.00 and \$4.00 per acre, and claiming from Petitioner \$2,810.00, plus interest, and \$500.00 additional, and costs (R. 63-66). Answer thereto was duly filed (R. 58-60).

Following trial, said District Court concluded that the judgment entered January 24, 1939, in the District Court of the United States for the Western District of North Carolina, was a valid, binding, and final judgment, and was *res adjudicata* as to any rights asserted by the United States in its Complaint in Intervention, and that the latter was estopped to assert said rights, and also that the Court was without authority to grant the injunctive relief requested by Petitioner, and accordingly it dismissed both the Complaint in Intervention and Petitioner's Complaint for Mandatory Injunction (R. 44-48).

Both the Petitioner and the United States then appealed to the United States Court of Appeals for the District of Columbia (R. 79), which, by its decision June 30, 1943, held that said District Court in North Carolina had no authority in the proceeding before it to enter a personal judgment against the United States, and that, therefore, the questions raised on the Complaint in Intervention required no consideration; and the judgment of the District of Columbia District Court was accordingly affirmed (R. 79-83).

Reasons Relied Upon for Allowance of the Writ.

The Court of Appeals erred, in that:

1. It did not give proper effect to applicable decisions of this Court.
2. It took into consideration terms of an option which was not in evidence and which constituted no part of the case.
3. It refused to give full effect to the final judgment of the Court in the condemnation proceedings wherein it was adjudicated that the Government had appropriated Petitioner's lands prior to said final judgment.

4. It improperly held that Petitioner was not entitled to judgment for the amount due by the Government for the property so appropriated by it.

5. It held that even though the property had been appropriated prior to final judgment in condemnation proceedings, the title did not pass until payment of price agreed upon, fixed in condemnation judgment.

6. It held that the Government could abandon the condemnation proceedings after it had actually appropriated the property in question.

Conclusion.

WHEREFORE, it is respectfully submitted that this Petition for allowance of a writ of certiorari should be granted.

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